



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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August 28, 1970

Honorable J. R. Singleton  
Executive Director  
Texas Parks and Wildlife Dept.  
John H. Reagan Building  
Austin, Texas 78701

Opinion No. M-668

Re: Whether the Texas Parks and Wildlife Department may exchange its negotiable coupon bonds with the low bidder for such bonds, for land owned by the low bidder.

Dear Mr. Singleton:

We are in receipt of your request for an opinion of this office as to whether:

1. The Texas Parks and Wildlife Department has authority to exchange its negotiable coupon "State of Texas Park Development Bonds" for a tract of land to be developed into a State Park;
2. The owner of suitable land who is the successful bidder for such "State of Texas Park Development Bonds", may receive such bonds in exchange for his land;
3. The State Parks and Wildlife Department may purchase land suitable for a park site from the owner of such land who is also the successful bidder for "State of Texas Park Development Bonds".

The relevant statute is Article 6070h, Vernon's Civil Statutes. Its Section 4 prescribes the requirements for the sale and issuance of State of Texas Park Development Bonds, and states in part, ". . . The proceeds from the sale of any bond, or bonds, shall be used for the purpose of creating the Texas Park Development Fund . . .". Section 7 of the Statute requires that bidders for the bonds must accompany their bids with, ". . . exchange or bank cashier's check for such sum as /The Department/ may consider adequate to be a forfeit guaranteeing the acceptance and payment for all bonds covered by such bids and accepted by the department." Section 9 provides

for the creation of special funds for administering ". . . the moneys provided for in this Act . . .". One of these funds is the Texas Park Development Fund into which the proceeds of bond sales are required to be placed by Section 4. Section 9-C provides for the investment of moneys in the Texas Park Development Fund.

The quoted portions of Article 6070h clearly contemplate that "State of Texas Park Development Bonds" are to be sold competitively for cash, and cannot therefore be exchanged for land.

In reply to your third question, we know of no prohibition against the purchase of land by the department from a person or a corporation who might be the successful bidder in the sale of "State of Texas Park Development Bonds", provided there has been compliance with all the statutory requirements for the competitive sale of the bonds for cash, at par value with accrued interest from their date.

An analogous situation is described in the case of Ogg v. Dies, 176 S.W. 638, (Tex.Civ.App. 1915, no writ), where the successful bidder on a contract to construct county roads was also the successful bidder for the purchase of the county bonds being sold to finance the same roads. The court said, at page 640,

" . . . The law does not prohibit a county from selling bonds to contractors for public works for the construction of which the bonds are issued. The statute forbids the sale of bonds of this character for less than par value and accrued interest; . . ."

The court further said that such a transaction is valid only where there has been strict compliance with all statutory requirements for the sale of the bonds, and conversely, is invalid where the transaction is used as a shield for the sale of the bonds for less than their par value and accrued interest.

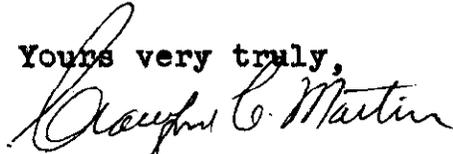
This case, in principle, supports our holding that the Parks and Wildlife Department may not pay in excess of the fair market value of the land in question so as to let the seller of the land recoup his loss for the purchase of bonds at an unfavorable interest rate in the current market.

S U M M A R Y

The Texas Parks and Wildlife Department is authorized to sell its State of Texas Park Development Bonds at par and accrued interest for cash only, and is not authorized to exchange bonds for land to be developed as a park site.

The department is authorized to buy land from the successful bidder for its bonds where there has been strict compliance with all the statutory provisions governing the sale of such bonds.

Yours very truly,



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APPROVED:  
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